

ASSEMBLY BILL

No. 1701

**Introduced by Committee on Environmental Safety and Toxic
Materials (Laird (Chair), Aghazarian (Vice Chair), Chu, Levine,
Lieber, Lowenthal, and Maddox)**

February 25, 2003

An act to amend Section 25360.2 of the Health and Safety Code,
relating to hazardous substance releases.

LEGISLATIVE COUNSEL'S DIGEST

AB 1701, as introduced, Committee on Environmental Safety and
Toxic Materials. Hazardous substance releases.

Existing law provides a rebuttable presumption that an owner of
property, as defined, that is the site of a hazardous substance release has
no liability under the Carpenter-Presley-Tanner Hazardous Account
Act for either a hazardous substance release that has occurred on the
property or a release of a hazardous substance to groundwater
underlying the property, if the release occurred at a site other than the
property. Existing law defines “owner” to be the owner of property, as
defined, who occupies a single-family residence constructed on the
property or the owner of common areas within a residential common
interest development who owns those common areas for the benefit of
the residential homeowners.

This bill would additionally include within the definition of
“owner,” the owner of property, as defined, who occupies $\frac{1}{2}$ of a
duplex constructed on the property.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 25360.2 of the Health and Safety Code is amended to read:

25360.2. (a) For purposes of this section, the following definitions apply:

(1) “Owner” means either (A) the owner of property who occupies a single-family residence *or one-half of a duplex* constructed on the property, or (B) the owner of common areas within a residential common interest development who owns those common areas for the benefit of the residential homeowners. This paragraph does not include the developer of the common interest development.

(2) “Property” means either (A) real property of five acres or less which is zoned for, and on which has been constructed, a single-family residence, or (B) common areas within a residential common interest development.

(b) (1) Notwithstanding any other provision of this chapter, an owner of property that is the site of a hazardous substance release is presumed to have no liability pursuant to this chapter for either of the following:

(A) A hazardous substance release that has occurred on the property.

(B) A release of a hazardous substance to groundwater underlying the property if the release occurred at a site other than the property.

(2) The presumption may be rebutted as provided in subdivision (d).

(c) An action for recovery of costs or expenditures incurred from the state account or the Hazardous Substance Cleanup Fund pursuant to this chapter in response to a hazardous substance release ~~shall~~ *may* not be brought against an owner of property unless the department first certifies that, in the opinion of the department, one of the following applies:

(1) The hazardous substance release that occurred on the property occurred after the owner acquired the property.

(2) The hazardous substance release that occurred on the property occurred before the owner acquired the property and at the time of acquisition the owner knew or had reason to know of the hazardous substance release.

1 (3) The owner of property where there has been a release of a
2 hazardous substance to groundwater underlying the property took,
3 or is taking, one or more of the following actions:

4 (A) Caused or contributed to a release of a hazardous substance
5 to the groundwater.

6 (B) Fails to provide the department, or its authorized
7 representative, with access to the property.

8 (C) Interferes with response action activities.

9 (d) In an action brought against an owner of property to recover
10 costs or expenditures incurred from the state account or the
11 Hazardous Substance Cleanup Fund pursuant to this chapter in
12 response to a hazardous substance release, the presumption
13 established in subdivision (b) may be rebutted if it is established
14 by a preponderance of the evidence that the facts upon which the
15 department made the certification pursuant to paragraph (1), (2),
16 or (3) of subdivision (c) are true.

17 (e) Notwithstanding any other provision of this chapter, this
18 section governs liability pursuant to this chapter for an owner of
19 property, as defined in subdivision (a).

